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4
5 Principal, California Water Research

6 **BEFORE THE**
7 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

8
9 HEARING REGARDING PETITION FILED
10 BY THE DEPARTMENT OF WATER
RESOURCES AND U.S. BUREAU OF
11 RECLAMATION REQUESTING CHANGES
IN WATER RIGHTS FOR THE
12 CALIFORNIA WATERFIX PROJECT

OPPOSITION TO THE CALIFORNIA
DEPARTMENT OF FISH AND
WILDLIFE'S MOTION TO QUASH
PCFFA/IFR'S SUBPOENA DUCES TECUM
AND REQUEST FOR PROTECTIVE
ORDER

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15 California Water Research is participating in the WaterFix Water Right Change Petition
16 Hearing on public interest grounds, and advocating for scientific integrity and transparency in the
17 WaterFix Hearing use of computer modeling. One of the most basic requirements of computer
18 modeling is verification and validation. There is a significant question of whether DWR's CWF
19 H3+ modeling assumptions even represent the *currently* planned operations for the WaterFix
20 Project under the California and Federal Endangered Species Acts. This question could be
21 answered in part by the documents requested under PCFFA's subpoena duces tecum to the
22 California Department of Fish and Wildlife ("CDFW".) The National Marine Fisheries Service
23 and the U.S. Fish and Wildlife Service are not participating in the WaterFix hearing, and the
24 Department of the Interior raised objections under the Touhy Act to providing witnesses to
25 testify under a subpoena by NRDC et. al. For this reason, timely production by the California

1 Department of Fish and Wildlife of the documents requested in PCFFA/IFR's subpoena duces
2 tecum is necessary for a fair hearing (Code Civ. Proc. § 1094.5.) Given that CDFW is the trustee
3 agency for fish and wildlife in the state of California, CDFW should make production of the
4 documents for the WaterFix hearing a priority.

5 California Water Research also asserts that a privilege log *is* required if documents are
6 withheld by CDFW. Government Code section 11450.10, subdivision (b) states, with respect to
7 subpoenas duces tecum: [t]he custodian of documents that are the subject of a subpoena duces
8 tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by
9 making the documents available for inspection or copying, together with an affidavit in
10 compliance with Section 1561 of the Evidence Code. Evidence code section 1561, subdivision
11 (a) (2) requires that "[t]he records shall be accompanied by the affidavit of the custodian or other
12 qualified witness, stating in substance each of the following: [...] (2) [t]he copy is a true copy
13 of *all* the records described in the subpoena duces tecum or search warrant..." (emphasis
14 added.)

15 For these reasons, the Hearing Officers should deny CDFW's motion.

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17 Dated March 8, 2018

Respectfully submitted,

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21 Deirdre Des Jardins
22 Principal, California Water Research

1 **STATEMENT OF SERVICE**

2
3 **CALIFORNIA WATERFIX PETITION HEARING**
4 **Department of Water Resources and U.S. Bureau of Reclamation**
5 **(Petitioners)**

6 I hereby certify that I have this day submitted to the State Water Resources
7 Control Board and caused a true and correct copy of the following document(s):

8 **Opposition to the California Department of Fish and Wildlife's**
9 **Motion to Quash PCFFA/IFR'S Subpoena Duces Tecum**
10 **and Request for Protective Order**

11 to be served by Electronic Mail (email) upon the parties listed in the Current Service List
12 for the California Water Fix Petition Hearing, dated March 6, 2018, posted by the State
13 Water Resources Control Board at
14 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

15 *Note: In the event that any emails to any parties on the Current Service List are
16 undeliverable, you must attempt to effectuate service using another method of service, if
17 necessary, and submit another statement of service that describes any changes to the
18 date and method of service for those parties.*

19 I certify that the foregoing is true and correct and that this document was executed on
20 March 8, 2018.

21 Signature:



22 Name: Deirdre Des Jardins

23 Title: Principal, California Water Research

24 Party/Affiliation:

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